

1654
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Application No. 09/720,278
Paper Dated: September 24, 2004
In Reply to USPTO Correspondence of August 24, 2004
Attorney Docket No. 702-002214

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/720,278
Applicant : Pieter Jacob Swart et al.
Filed : May 24, 2001
Title : "Pharmaceutical Preparations for Use in Combatting or Preventing Surface Infections Caused by Microorganisms"
Group Art Unit : 1654
Examiner : Roy Teller

ELECTION WITH TRAVERSE

Commissioner of Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Election is in response to the Office Action dated August 24, 2004.

In response to the election of species requirements, the following elections are made with traverse. In claims 3 and 12, Applicant is asked to elect a species, and in claims 9 and 12, Applicant is asked to elect a second species. The species elected with traverse are, for claims 3 and 12, bovine lactoferrin, and for claims 9 and 12, azole compounds (which embrace fluconazol).

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 24, 2004.

Kimberly N. Welday
(Typed Name of Person Mailing Paper)

Kimberly N. Welday 09/24/2004
Signature Date

The Examiner is respectfully requested to reconsider and to withdraw the species election requirement, even though Applicant understands that upon the allowability of a generic claim, Applicant will be entitled to examination of a reasonable additional number of species.

The reason why each species election requirement should be withdrawn is that the groups from which species' election has been requested are closely knit, homogeneous groups that can be readily searched and examined simultaneously. For example, in claims 3 and 12 all the purported species center around lactoferrin and its derivatives or similar polypeptides. In claims 9 and 12 the overlap among the purported species is profound, in that fluconazol is both a polyene and an azole compound, and 5-fluorocytosine and amphotericin(e) B are each listed twice. These tightly knit, cohesive groups would not create a searching or examination burden on the Examiner because they do not represent lists of distinctive chemical species that would be variously classified in different patent classifications.

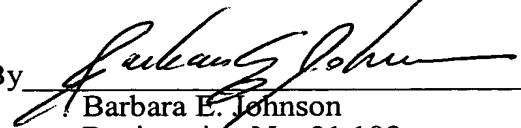
At a minimum, the Examiner is requested to alter the articulation of species for the purposes of claims 3 and 12 to acknowledge that "lactoferrin" is an electable species. As the Examiner will appreciate from claim 4 in which "lactoferrin" per se is recited, "lactoferrin" itself is an important species of the invention and is the species which--if it is allowed to do so--Applicant would prefer to elect for claims 3 and 12. The lactoferrin subgenus in claim 3, for example, is already represented by the recited human lactoferrin, bovine lactoferrin, polycationic peptides occurring in these proteins, hydrolysates of lactoferrin, cation rich peptides originating from lactoferrin, and polypeptides having an amino acid sequence selected from SEQ IDs NO 1-28. The searching and consideration of these highly related peptides will be de facto proceed in consonance and the Examiner need not fear any undue search or examination burden by allowing election of the "lactoferrin" subgenus as a species in this case.

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Examination and allowance of pending claims 1-15 and 22 is respectfully
requested.

Respectfully submitted,
WEBB ZIESENHEIM LOGSDON
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By



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Attorney's Docket No. 702-002214

TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Serial No.: 09/720,278

Filing Date: May 24, 2001

Examiner: Roy Teller

Group Art Unit: 1654

Invention: Pharmaceutical Preparations for Use in Combatting or Preventing Surface Infections Caused by Microorganisms

Transmitted herewith is an Amendment in the above-identified application.

☐ Small Entity Status is/has been asserted for this application under 37 CFR 1.27.

☐ A verified statement to establish small entity status under 37 CFR 1.27 is enclosed.

☒ No additional fee is required.

☐ The fee has been calculated as shown below:

No of Claims After Amendment	Highest No. Previously Paid For	Present Extra	Small Entity Rate	Non-Small Entity Rate	Charge
Total <u>16</u>	<u>20</u>	<u>0</u>	x \$ 9.00	x \$ 18.00	\$ <u>0.00</u>
Indep. <u>3</u>	<u>3</u>	<u>0</u>	x \$ 43.00	x \$ 86.00	\$ <u>0.00</u>
First Presentation of Multiple Dependent Claim/s			+ \$145.00	+ \$290.00	\$ <u>0.00</u>
TOTAL ADDITIONAL FEE					\$ <u>0.00</u>

☐ A check in the amount of \$ _____ is enclosed to cover the filing fee.

☐ A check in the amount of \$ _____ is enclosed for a _____ month Petition for Extension of Time.

☒ The Commissioner is hereby authorized to charge payment of the following fees associated with this communication to Deposit Account No. 23-0650. Please refund any overpayment to Deposit Account No. 23-0650. An original and two copies of this sheet are enclosed.

☒ Any additional filing fees required under 37 CFR 1.16.

☒ Any patent application processing fees under 37 CFR 1.17.

September 24, 2004

Date

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